

REMARKS/ARGUMENTS

This Amendment and Response is responsive to the non-final Office action dated August 7, 2008, setting forth a shortened three-month statutory period for reply expiring on November 7, 2008. This Amendment and Response is submitted on November 7, 2008.

The Assignee thanks the Examiner for reviewing this application and issuing an Office action.

Prior to entry of this Amendment, claims 4-6, 15-17, 19-22, and 35 are pending in the application, with claims 4, 15, and 17 being independent claims. By this Amendment, claims 4-6, 19 and 21 are amended, and claims 15-17 are canceled, without prejudice to or disclaimer of the subject matter recited therein. Accordingly, after entry of this Amendment, claims 4-6, 19-22 and 35 will be pending, with claims 4, 6, 19 and 21 being independent claims.

I. Allowable Subject Matter

The Assignee gratefully acknowledges the indication that claims 6 and 19-22 contain allowable subject matter. By this Amendment, the Assignee amends claims 6, 19 and 21 to be in independent form including the features of the respective claims from which they had depended.

II. Claim Rejections Under 35 U.S.C. § 112, Second Paragraph

The Office action rejects claims 5 and 6 under 35 U.S.C. § 112, second paragraph, as being indefinite. Specifically, the Office Action indicates that the phrase "the master control unit calculates the amount of energy expended based upon the received first and second signals" lacks proper antecedent basis for the signals being received.

By this Amendment, the Assignee amends claims 5 to correct the antecedent basis issue raised in the Office Action, as well as a potential antecedent basis issue not raised by the Office Action. The Assignee respectfully submits that such amendment does not narrow the scope of claim 5. The Assignee also similarly amends claim 6 in placing claim 6 in independent form.

In view of the foregoing, the Assignee respectfully submits that claims 5 and 6 fully comply with 35 U.S.C. § 112, second paragraph, and respectfully requests that the rejection be withdrawn.

III. Claim Rejections under 35 U.S.C. § 102

The Office action rejects claims 4, 15-17, and 35 under 35 U.S.C. § 102(b) over U.S. Patent No. 6,645,124 to Clem. The Assignee respectfully submits that this rejection is moot with respect to canceled claims 15-17, and respectfully traverses the rejection with respect to the remaining claims.

As amended independent claim 4 recites that the at least one treadle is configured to perform a downward movement in response to an increase in a user applied weight and to perform an upward movement in response to a decrease in the user applied weight, and that the second sensor generates at least one second signal with each movement of a treadle.

The Office action refers to Figure 2 of Clem as disclosing at least one treadle. However, the treadle of Clem is not configured to perform a downward movement in response to an increase in a user applied weight and to perform an upward movement in response to a decrease in the user applied weight. The treadle of Clem is only configured to provide a variable-incline surface responsive to control signals from a controller 28.

As specifically disclosed by Clem, the incline or grade is varied by a grade-adjustment (second resistance) mechanism 15 including an incline motor 36 and suitable linkage to a lift frame 48, with the incline motor 36 being controlled by signals from the controller 28. See column 5, line 65 through column 6, line 9.

Thus, the treadle of Clem is configured to perform upward and downward movements only in response to control signals from a controller, not in response to a respective increase or decrease in user applied weight as recited in claim 4. As the treadle of Clem does not perform such movements, the Applicant respectfully submits that Clem cannot reasonably be considered to disclose a second sensor that generates at least one second signal with each movement of a treadle as recited in claim 4.

Therefore, the Assignee respectfully submits that claim 4 is patentable over Clem. The Assignee also respectfully submits that claim 35 is patentable over Clem at least in view of the patentability of claim 4 from which it depends, as well as for the additional features it recites. Accordingly, the Assignee respectfully requests withdrawal of the rejection based on Clem.

IV. Conclusion

In accordance with the amendments and remarks set forth herein, the Assignee respectfully submits the application and all claims are in a condition for allowance, and requests such prompt allowance.

Appl. No. 10/789,579
Reply to Office Action of August 7, 2008

The Assignee believes no fees or petitions are due with this filing. However, should any such fees or petitions be required, please consider this as authorization therefor and please charge such fees to Deposit Account number 04-1415.

Should any issues remain that the Examiner believes may be dealt with in a telephone conference, he is invited to contact the undersigned at 303-629-3400.

Respectfully submitted,

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